

BEFORE THE
DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

Roger Palmieri, M.D.)
License # A29954)

Case No. D-3346

Respondent.)
_____)

ORDER GRANTING STAY ORDER

Respondent has filed a request for a
stay of execution of the Decision with an effective date of
July 18, 1988.

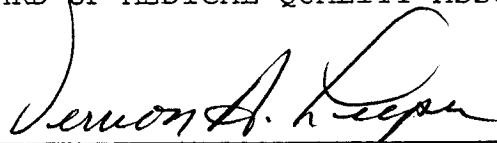
Execution is stayed until August 17, 1988.

This stay is granted solely for the purpose to allow
time for the moving party to file a petition for reconsideration
and to allow time for the Division to review and act on the
petition for reconsideration.

Dated July 14, 1988

DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE

By



VERNON A. LEEPER
Program Manager
Enforcement

BEFORE THE DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

Roger Palmieri, M.D.
Certificate # A29954

Respondent.

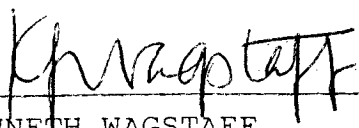
No. D-3346

ORDER DELAYING DECISION

Pursuant to sections 11517 (d) of the Government Code, the Division of Medical Quality, finding that a further delay is required by special circumstances, hereby issues this order delaying the decision for no more than 30 days from June 9, 1988 (when the 100 day period expires) to July 11, 1988.

The reasons for the delay are as follows: This case is on the agenda for discussion and decision at the next regularly scheduled meeting of the Division of Medical Quality, set for June 2, 1988, which is seven days before the expiration of the 100 day period on June 9, 1988. Therefore, the Division needs additional time to meet and complete its work in this case, including time after the meeting to draft and type the appropriate pleading, and to effect service on the parties.

DATED: June 1, 1988


KENNETH WAGSTAFF
Executive Director
BOARD OF MEDICAL QUALITY ASSURANCE

BEFORE THE DIVISION OF MEDICAL QUALITY

BOARD OF MEDICAL QUALITY ASSURANCE

DEPARTMENT OF CONSUMER AFFAIRS

STATE OF CALIFORNIA

In the Matter of the)	
Accusation Against:)	
)	
ROGER PALMIERI, M.D.)	
177 F Riverside Avenue)	NO. D-3346
Newport Beach, California 92663)	
)	L-35102
Physician's and Surgeon's)	
Certificate No. A-29954)	
)	
Respondent.)	
)	

DECISION

A Medical Quality Review Committee (MQRC) originally heard this case and issued a proposed Decision which was non-adopted by the Division of Medical Quality. The Division proceeded to decide the case itself upon the record, including the transcript. The Parties were afforded the opportunity to present both written and oral argument before the Division itself.

Having considered the entire matter, the Division now makes this Decision:

Except for a changed penalty order and a revised Findings of Fact in paragraph IX, the attached Proposed Decision of the MQRC is adopted by the Division as its decision in this case.

Findings of Fact IX is deleted and replaced as follows:

IX

Respondent, who practices psychiatry and is board-eligible in that specialty, allowed himself and the prestige of his medical license to be used in a scheme to promote a so-called diagnostic test (Cytotoxic) that was bogus. Schemes of this type perpetrated on the public gain credibility when the public sees advertisements (as in this case) showing that a physician is connected with the

operation of the clinic's offering to perform this test. In addition, Respondent's duties included the signing of insurance forms for payment. Without some physician willing to put his name on the line, insurance companies could not have paid for Cytotoxic testing at about \$350.00 per test.

The penalty order in the Proposed Decision is deleted and replaced as follows:

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Certificate No. A-29954 issued to Respondent Roger Palmieri, M.D., is revoked.

However, revocation is stayed and Respondent is placed on probation for five (5) years upon the following terms and conditions:

1. As part of probation, Respondent is suspended from the practice of medicine for sixty (60) days beginning the effective date of this decision.

2. During probation, Respondent is prohibited from engaging in Cytotoxic testing and shall restrict his practice to psychiatry.

3. Within sixty (60) days of the effective date of this decision, Respondent shall take and pass an oral clinical examination in psychiatry to be administered by the Division or its designee. If Respondent fails this examination, Respondent must take and pass a re-examination consisting of a written as well as an oral clinical examination. The waiting period between repeat examinations shall be at three month intervals until success is achieved. The Division shall pay the cost of the first examination and Respondent shall pay the cost of any subsequent re-examinations.

Respondent shall not practice medicine until Respondent has passed the required examination and has been so notified by the Division in writing.

4. Respondent shall take and complete a course in Medical Ethics. Within sixty (60) days of the effective date of this decision, Respondent shall select and submit a course to the Division for its prior approval.

5. Within sixty (60) days of the effective date of this decision, Respondent shall submit to the Division for its prior approval a community service program in which Respondent shall provide free medical services on a regular basis to a community or charitable facility or agency for at least sixteen (16) hours a month for the first twenty-four (24) months of probation.

6. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.

7. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.

8. Respondent shall comply with the Division's probation surveillance program.

9. Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.

10. The period of probation shall not run during the time Respondent is residing or practicing outside the jurisdiction of California. If, during probation, Respondent moves out of the jurisdiction of California to reside or practice elsewhere, Respondent is required to immediately notify the Division in writing of the date of departure, and the date of return, if any.

11. Upon successful completion of probation, Respondent's certificate will be fully restored.

12. If Respondent violates probation in any respect, the Division, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

The effective date of this Decision shall be _____

July 18, 1988.

So ordered June 16, 1988

DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE

By

Theresa Claassen
Secretary-Treasurer

THERESA CLAASSEN

BEFORE THE DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

No. D-3346

Roger Palmieri, M.D.
Certificate # A-29954

Respondent.)

NOTICE OF NON-ADOPTION
OF PROPOSED DECISION

NOTICE TO ALL PARTIES:

YOU ARE HEREBY NOTIFIED that the Division of Medical Quality voted not to adopt the proposed decision recommended in this case. The Division itself will now decide the case upon the record, including the transcript.

To order a copy of the transcript, please contact the Transcript Clerk, Office of Administrative Hearings, _____

314 West First Street, Los Angeles, CA 90012 (213) 620-4654

After the transcript has been prepared, the Division will send you notice of the deadline date to file your written argument. Your right to argue on any matter is not limited. The Division is particularly interested in arguments on the following:

~~Why the penalty should not be increased.~~

In addition to written argument, oral argument may be scheduled if any party files with the Division, within 20 days from the date of this notice, a written request for oral argument. If a timely request is filed, the Division will serve all parties with written notice of the time, date and place of hearing.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Division. The mailing address of the Division is as follows:

Division of Medical Quality
BMQA
1430 Howe Avenue
Sacramento, CA 95825
(916) 920-6363

Dated: September 29, 1987

DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE

By

Vernon A. Leeper
VERNON A. LEEPER

BEFORE THE
DIVISION OF MEDICAL QUALITY ASSURANCE
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	
)	
ROGER PALMIERI, M.D.)	
177 F Riverside Avenue)	No. D-3346
Newport Beach, California 92663)	
Physician's and Surgeon's)	
Certificate No. A-29954)	L-35102
)	
)	
Respondent.)	
)	

PROPOSED DECISION

This matter came on regularly for hearing before a Panel of the District 13 Medical Quality Review Committee, at Fullerton, California on July 20 and 21, 1987, at 1:00 p.m. Robert A. Neher, Administrative Law Judge of the Office of Administrative Hearings presiding.

Panel members present were:

R. Wayne Blackburn, Pharm.D., Acting Chairperson
Pauline Hairabedian, Public Member
Lloyd Carnahan, M.D.
George H. Derry, M.D.

Barry D. Ladendorf, Deputy Attorney General, represented the complainant. Respondent appeared in person, and was represented by Lyle J. Robertson, Attorney at Law. Documentary and oral evidence, including evidence by way of stipulation was introduced, the matter argued and submitted, and the four members of the Panel proceeded to consider the matter. The Administrative Law Judge was present during the Panel's consideration of the case. The Panel finds the following facts:

I

Kenneth J. Wagstaff, made the Accusation in his official capacity as Executive Director of the Board of Medical Quality Assurance.

II

On February 18, 1976, respondent Roger Palmieri, M.D., was issued Physician's and Surgeon's License No. A-29954, authorizing him to practice medicine in the State of California. The license is in good standing.

III

At all times herein mentioned, respondent served as the Medical Director for Tannare International, Inc., dba Bio-Health Centers, an unlicensed clinical laboratory, located in Orange County, California, engaged in the business of cytotoxic testing. Neither respondent nor Bio-Health Centers had a fictitious name permit, as required by Business and Professions Code Section 2415.

IV

As the Medical Director of Bio-Health Centers, respondent failed to properly supervise the technical and scientific operation of the laboratory, including the selection and supervision of procedures, reporting of results, and the active participation in the laboratory operations, including, the following acts: (a) respondent was not present at the laboratory during working hours; (b) respondent gave pre-authorizations for all blood drawn at Bio-Health Centers without ever examining patients and he gave pre-authorization to employees of Bio-Health to draw blood on patients in other states; (c) respondent permitted unlicensed persons to draw blood; and (d) respondent permitted unlicensed persons to counsel patients regarding cytotoxic test results and dietary plans.

V

Respondent's conduct set forth above constitutes his being a nominal medical director of a clinical laboratory.

VI

By his conduct set forth herein, from at least January 1, 1983, to the Spring of 1985, respondent aided and abetted the unlicensed practice of medicine by authorizing

unlicensed persons to hold themselves out to the public of California as being duly competent and capable to diagnose, treat, cure, counsel, advise, and assist any person who suffers from various human afflictions, diseases, conditions, and especially those related to food allergies.

VII

At the commencement of hearing herein, complainant dismissed the allegations set forth in paragraphs 13, 13A through 13E, 14, 15, 21 and 22 of the Accusation and no Findings are made thereon.

VIII

At the time of the above events, respondent was having personal problems and relocating his office to Orange County, and needed the extra money. At that time, he also thought that cytotoxic testing provided a valid service for people who may have nutritional problems.

He now understands and admits that cytotoxic testing for food allergies is an unproven diagnostic test that has no current proven clinical value in determining a person's allergic reactions or sensitivities to food or other environmental agents.

IX

Respondent is board-eligible in psychiatry, limits his practice to that specialty, and appears competent to the point that additional continuing medical education does not seem necessary; though he should be required to display his knowledge of clinical laboratory diagnosis and testing, as well as nutrition, in an oral clinical examination. He has no prior record of disciplinary action.

X

The above findings of fact are established by clear and convincing evidence, and except as hereinabove found to be true all other allegations of the Accusation are found to be dismissed or surplusage.

* * * * *

Pursuant to the foregoing findings of fact, the Panel makes the following determination of issues:

I

Cause for disciplinary action against the respondent exists pursuant to Business and Professions Code Sections 2220 and 2227, as follows:

A. Pursuant to Sections 2272 and 2285 of said Code, by reason of Finding III.

B. Pursuant to Sections 1284 and 2234(a) of said Code by reason of Findings IV and V.

C. Pursuant to Sections 2234(a) and 2264 of said Code, by reason of Finding VI.

II

Consideration has been given to all competent evidence of mitigation and rehabilitation; and the Board's guidelines for disciplinary action have been considered in light thereof.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The physician's and surgeon's certificate number A-29954, heretofore issued to respondent Roger Palmieri by the Board, is hereby revoked; provided, however, execution of this order of revocation is hereby stayed and respondent is placed on probation for a period of five (5) years upon the following terms and conditions:

1. (a) Within 60 days of the effective date of this decision, respondent shall take and pass an oral clinical examination in clinical laboratory diagnosis and nutrition, to be administered by the Division or its designee. If respondent fails this examination, respondent must take and pass a re-examination consisting of a written as well as an oral clinical examination. The waiting period between repeat examinations shall be at three month intervals until success is achieved. The Division shall pay the cost of the first examination and respondent shall pay the cost of any subsequent re-examination.
- (b) If respondent fails the first examination, respondent shall cease the practice of medicine until the re-examination has been successfully passed, as evidenced by written notice to respondent from the Division.

2. Respondent shall take and complete a course in Medical Ethics. Within 60 days of the effective date of

this decision, respondent shall select and submit a course to the Division for its prior written approval.

3. Within 60 days of the effective date of this decision, respondent shall submit to the Division for its prior written approval, a community service program in which respondent shall provide free medical service on a regular basis to a community or charitable facility or agency for at least sixteen (16) hours a month for the first twenty-four (24) months of probation.

4. Respondent shall comply with all laws of the United States, the State of California and its political subdivisions, and all rules and regulations of the Board of Medical Quality Assurance of the State of California.

5. Respondent shall report in person to the Division of Medical Quality or its agents or medical consultants at such meetings or interviews as may be directed during the period of probation.

6. Respondent shall submit to the Division of Medical Quality, at quarterly intervals, a declaration under penalty of perjury on forms provided by the Division, to the effect that he is fully and faithfully complying with all the terms and conditions of this probation. The first report shall be due when ordered by the Executive Director.

7. Respondent shall comply with the Division's probation surveillance program. In connection therewith, respondent shall make himself and/or any facility over which he has cognizance available for inspection by authorized representatives of the Division at any time for the purpose of verifying respondent's compliance with the terms of his probation.

8. In the event respondent should leave California to reside or to practice outside the State, respondent shall immediately notify the Division, in writing, of the dates of departure and return. Periods of residency or practice outside California shall not apply to the reduction of this probationary period.

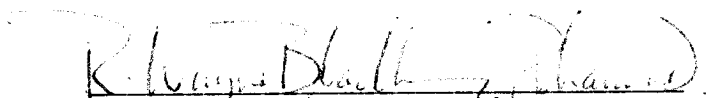
Upon full compliance with the terms and conditions herein set forth and upon the expiration of the probationary period, the certificate shall be restored to its full privileges; provided, however, that in the event respondent violates or fails to comply with any of the terms and conditions hereof, the Division of Medical Quality, after notice to respondent and opportunity to be heard, may terminate this probation and reinstitute the revocation or make such other

order modifying the terms of probation herein as it deems just and reasonable in its discretion.

I hereby submit the foregoing which constitutes the Proposed Decision of the Panel, District 13 Medical Quality Review Committee, in the above-entitled matter as a result of the hearing had before said Panel at Fullerton, California, on the aforementioned dates and recommend its adoption as the Decision of the Division of Medical Quality.

DISTRICT 13 MEDICAL QUALITY
REVIEW PANEL

DATED: 1/29/87


R. WAYNE BLACKBURN, Pharm D.
Acting Chairperson

RAN:hk

1 JOHN K. VAN DE KAMP, Attorney General
2 of the State of California
3 BARRY D. LADENDORF,
4 Deputy Attorney General
5 110 West A Street, Suite 700
6 San Diego, California 92101
7 Telephone: (619) 237-7811

8 Attorneys for Complainant

9 BEFORE THE
10 DIVISION OF MEDICAL QUALITY
11 BOARD OF MEDICAL QUALITY ASSURANCE
12 DEPARTMENT OF CONSUMER AFFAIRS
13 STATE OF CALIFORNIA

14 In the Matter of the Accusation) NO. D-3346
15 Against:)
16 ROGER PALMIERI, M.D.)
17 177 F Riverside Avenue) ACCUSATION
18 Newport Beach, California 92663)
19 Physician's and Surgeon's)
Certificate No. A-29954)
Respondent.)

20 KENNETH J. WAGSTAFF alleges:

21 1. He is the Executive Director of the Board of
22 Medical Quality Assurance and makes and files this accusation in
23 his official capacity.

24 LICENSE STATUS

25 1. Roger Palmieri, M.D. (respondent) holds
26 physician's and surgeon's certificate No. A-29954, issued
27 February 18, 1976. There has been no prior disciplinary action.

1 STATUTES

2 3. Business and Professions Code section 2220 (All
3 code references are to the Business and Professions Code unless
4 otherwise stated) provides, in part, that the Division of
5 Medical Quality (Division) may take action against all persons
6 guilty of violating the Medical Practice Act.

7 4. Code section 2234 provides, in part, that the
8 Division shall take action against any licensee who is charged
9 with unprofessional conduct, including, but not limited, to the
10 following:

11 (a) Violating or attempting to violate, directly or
12 indirectly, or assisting in or abetting the violation of, or
13 conspiring to violate, any provision of this chapter (Medical
14 Practice Act).

15 (b) Gross negligence.

16 (d) Incompetence.

17 5. Code section 2264 provides that the employing,
18 directly or indirectly, the aiding, or the abetting of any
19 unlicensed person, or any suspended, revoked, or unlicensed
20 practitioner, to engage in the practice of medicine or any other
21 mode of treating the sick or afflicted, which requires a license
22 to practice, constitutes unprofessional conduct.

23 6. Code section 2272 provides that any advertising
24 in violation of section 17500, relating to false or misleading
25 advertising, constitutes unprofessional conduct.

26 /

27 /

1 7. Code section 2272 provides that any advertising
2 of the practice of medicine in which the licensee fails to use
3 his or her own name, or approved fictitious name constitutes
4 unprofessional conduct.

5 8. Code section 2285 provides that the use of any
6 fictitious, false, or assumed name, or any name other than his
7 or her own by a licensee, either alone, in conjunction with a
8 partnership or group, or as the name of a professional
9 corporation, in any public communication, advertisement, sign,
10 or announcement of his or her practice without a fictitious-name
11 permit obtained pursuant to section 2415 constitutes
12 unprofessional conduct.

13 9. Code section 651, subparagraph (a) provides, in
14 part, that it is unlawful for any person licensed under this
15 division to disseminate or cause to be disseminated, any form of
16 public communication containing a false, fraudulent, misleading,
17 or deceptive statement or claim, for the purpose of or likely to
18 induce, directly or indirectly, the rendering of professional
19 services in connection with the professional practice or
20 business for which he is licensed.

21 10. Code section 652 provides, in part, that it is
22 unprofessional conduct for a licensed person (physician and
23 surgeon) to violate the provisions of section 651.

24 11. Code section 1284 provides that it is unlawful
25 for a duly licensed physician and surgeon, or any person
26 authorized to serve as director under this chapter, to serve
27 only as a nominal director of a clinical laboratory.

1 FALSE AND MISLEADING ADVERTISEMENTS

2 12. At all times herein mentioned, respondent served
3 as the Medical Director for Tannare International, Inc., dba
4 Bio-Health Centers and B.H.C. Licensing Corporation, dba
5 Bio-Health Centers, an unlicensed clinical laboratory, located
6 in Orange County, California.

7 13. Beginning on a date unknown to complainant, and
8 continuing to the present, respondent, as Medical Director for
9 the Bio-Health Centers, has disseminated, caused to be
10 disseminated, or aided in the dissemination, by public
11 communication in California and other states, of false,
12 fraudulent, misleading, or deceptive statements on claims
13 regarding cytotoxic food testing for allergies, for the purpose
14 of or likely to induce, directly or indirectly, the rendering of
15 professional medical services, including but not limited to the
16 following statements.

17 (A) That "... [s]uccess from the Cytotoxic test is
18 widespread and has conquered many health problems for both
19 children and adults."

20 Said statements and representations are untrue or
21 misleading, in that Cytotoxic testing has not conquered many
22 health problems, and there is no acceptable scientific or
23 medical proof that cytotoxic testing has any validity in the
24 diagnoses, detection or treatment of the human afflictions,
25 diseases or conditions aforementioned and and in particular, in
26 diagnosing, detecting or treating any affliction, disease or
27 condition related to or caused by allergies, nor is there any

1 evidence or proof that cytotoxic testing has widespread success
2 for any medical purpose.

3 (B) That cytotoxic testing reliably
4 detects or diagnoses food sensitivity and states that:

5 "By eliminating sensitive foods from your
6 diet you may cure an unbelievable amount of
7 emotional and physical problems, such as excess
8 weight, headaches, sinus problems, hay fever,
9 arthritis, asthma, cramps, ulcers, heartburn,
10 indigestion, pimples, rashes, fatigue, insomnia,
11 hyperactivity in children, depression and many
12 more."

13 Said statements and representations are untrue or
14 misleading in that said statement and representations imply that
15 cytotoxic testing can reliably detect or diagnose food
16 sensitivity and that by removing certain foods from the diet
17 that the afflictions, diseases or conditions aforementioned can
18 be cured. In truth and in fact, there is no acceptable
19 scientific or medical evidence to establish the validity of
20 cytotoxic testing either as a diagnostic tool or a guide to
21 therapy; nor is there acceptable scientific or medical evidence
22 that cytotoxic testing will identify sensitive foods which if
23 eliminated from ones diet, will cure the afflictions, diseases
24 or conditions aforementioned.

25 (C) That the cytotoxic test has been recognized by
26 the American Medical Association.

27 /

1 Said statement and representation is untrue or
2 misleading because the statement and representation implies that
3 the American Medical Association has approved the use of cytotoxic
4 testing for the purpose of detecting, diagnosing or treating
5 afflictions, diseases, or conditions related to allergy and food
6 sensitivity. In truth and in fact, the American Medical
7 Association has not recognized or approved cytotoxic testing for
8 such purposes.

9 (D) That the cytotoxic test gives an accurate
10 picture of what foods are compatible with each person and that
11 the test is 80-90% accurate.

12 Said statement and representations are untrue or
13 misleading. In truth, and in fact, there is no acceptable
14 scientific or medical evidence that a cytotoxic test gives an
15 accurate picture of what foods are compatible with each person
16 or that it is 80-90% accurate.

17 (E) That after calculating the results of the
18 cytotoxic test each person shall receive an accurate nutritional
19 program especially designed to meet that person's needs.

20 Said statement and representations are untrue or
21 misleading because it implies and suggests that a cytotoxic test
22 has and/or will provide meaningful information and has been
23 and/or will be helpful in designing a specific nutritional
24 program to meet specific individual's needs. In truth, and in
25 fact, there is no acceptable scientific or medical evidence to
26 establish the validity of cytotoxic testing either as a
27 diagnostic tool or as a guide to nutritional or any other therapy.

14. Said statements set forth in paragraph 13 above are false, misleading or deceptive and a violation of code section 651. As a result, respondent is subject to discipline pursuant to section 652 of the code.

15. Said statements set forth in paragraph 13 above are false, misleading, and deceptive and likewise a violation of code section 17500. As a result, respondent is subject to discipline pursuant to code section 2271.

NO FICTITIOUS NAME PERMIT

16. At all times herein mentioned, respondent and Bio-Health Centers did not have a fictitious-name permit as required by code section 2415. Respondent's, in conjunction with Bio-Health Centers, engaging in the practice of medicine without having a fictitious-name permit is unprofessional conduct and a cause for discipline pursuant to code sections 2285 and 2272.

AIDING AND ABETTING UNLICENSED PRACTICE

17. Beginning on a date unknown to complainant but continuing to the present, respondent has aided and abetted the unlicensed practice of medicine in that he has employed, supervised, assisted, and trained unlicensed persons to hold themselves out to the public of California, and other states, as being duly competent and capable to diagnose, treat, cure, counsel, advise, and assist any person who suffers from various human afflictions, diseases, conditions, and especially those related to food allergies.

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18. Respondent's conduct as set forth in paragraph 17 above is unprofessional conduct in violation of code section 2264 and a cause for discipline.

NOMINAL DIRECTOR

19. As the Medical Director of Bio-Health Centers, respondent has failed to properly supervise the technical and scientific operation of the laboratory, including the selection and supervision of procedures, reporting of results, and the active participation in the laboratory operations, including, but not limited to, the following: (a) respondent is not now, nor has he been, present at the laboratory during working hours; (2) respondent has given pre-authorizations for all blood drawn at Bio-Health Centers or by employees of Bio-Health in other states without ever examining patients; (3) respondent permits unlicensed persons to draw blood; (4) respondent permits unlicensed persons to counsel patients regarding cytotoxic test results and dietary plans.

20. Respondent's conduct as set forth in paragraph 19 above is that of a nominal medical director of a clinical laboratory and is unprofessional conduct pursuant to code section 1284 in conjunction with code section 2234 and a cause for discipline.

GROSS NEGLIGENCE AND INCOMPETENCE

21. Respondent, as the Medical Director of Bio-Health Centers, has in the past and continues to the present to perform cytotoxic blood testing for food allergies for the purpose of detecting, diagnosing, curing, and treating such


1 afflictions, diseases, and conditions as depression, headaches,
2 weight problems, sinus problems, water retention, arthritis, hay
3 fever, asthma, low blood sugar, acne, rashes, allergies, cramps,
4 heartburn, indigestion, fatigue, insomnia and other health
5 difficulties. In truth, and in fact, respondent knows or
6 should know that there is no scientific or medical proof that
7 cytotoxic testing has any validity in the diagnoses, detection
8 or treatment of the human afflictions, diseases or conditions
9 aforementioned, and in particular, in diagnosing, detecting or
10 treating any affliction, disease or condition related to or
11 caused by food allergies.

12 22. Respondent's use of cytotoxic food testing as
13 set forth in paragraph 21 above is gross negligence and
14 incompetence in violation of code section 2234, subdivisions (b)
15 and (d) and a cause for discipline.

16 WHEREFORE, complainant prays that the Division hold a
17 hearing on the above-mentioned allegations and following said
18 hearing: (a) Suspend or revoke respondent's medical
19 certificate; and,

20 (2) Take such action as may be necessary to protect
21 the public health, safety and welfare.

22 DATED: May 29, 1985

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26
27

KENNETH J. WAGSTAFF
Executive Director
Board of Medical Quality Assurance
Complainant